

# Capacity building for regulation

## Why do we need an innovative approach for capacity building ?

**Governments worldwide are striving to create new regulatory bodies in response to the liberalisation of economies and privatisation. CRC research on the performance of such institutions has uncovered a lack of conceptual understanding on the part of regulators of the management and organisational aspects of putting regulatory intentions into practice. Current literature also reflects a lack of knowledge in this area and provides an inadequate integration of the respective regulation and management concepts. Additionally most approaches to capacity building to address this imbalance of knowledge and practice remain prescriptive in nature and rely heavily on recommended training to raise performance. It is in these circumstances that CRC research has pointed the way forward towards an innovative approach that allows regulators to analyse the management processes that underpin the effective delivery of regulation and to identify 'good practice' improvement measures. This policy brief provides a guide to the required methodology which stresses a move away from prescriptive methods for capacity building towards the generation of knowledge and actions appropriate for regulators, taking into account the particular organisational and country circumstances they face.**

## What constitutes capacity building in a regulatory agency ?

Capacity building in a regulatory agency refers to the identification and implementation of institutional and management processes that make regulation 'effective' and 'efficient'. Effective refers to the ability to deliver regulation according to the intentions set for it, while "efficient" refers to the minimisation of scarce resources in delivering it. While these aims may be personally managed by a regulator in a small agency, once a certain threshold size of office is reached, in terms of administrative and technical staff employed, then management requires a more professional approach. What constitutes this threshold size is a matter of debate but probably involves a size beyond about twenty staff, when regulators can no longer personally administer matters in a consistent manner as it were 'out of their heads' in much the same way as small entrepreneurs would. The experience of the CRC suggests, for instance, that regulatory bodies for the utilities in a wide range of developing countries have organisational sizes well beyond the threshold suggested. For organisations of this size therefore it is important that a regulator introduces managerial and organisational practices that enable regulation

to be delivered in the way intended.

Another very important reason for seeking the optimum performance possible in the management and delivery of regulatory processes is the fact that a significant proportion of industry/commercial suppliers, subject within their respective sectors to regulation, are organisations of the highest calibre in management terms who deploy very professional methods in dealing with a regulator, e.g. in the accumulation of relevant data and in equipping their representatives with up to date information for the purposes of negotiation. A regulator is therefore obliged to plan and manage regulatory processes at the very least to the commercial standards demonstrated by sector providers, and probably beyond these, if regulatory regimes are to be created that meet the needs of both consumers and suppliers, and are sensitive to a country's economic interests. Not to raise capability in this way increases the risk of:

- information asymmetries that affect the ability to achieve the appropriate regulatory framework to fully monitor market behaviour and to make necessary adjustments.
- 'regulatory capture' which may totally inhibit the ability to deliver regulatory intention.

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How then should a regulator consider what constitutes the best way forward in terms of ensuring that management and organisational processes are fully supportive of regulation? As with regulation itself CRC believes that no one 'best model' will fit all situations and that progress is only possible by selecting approaches that reflect the context, experience and culture in which regulation will be placed. Only by considering these factors will it be possible for regulatory bodies to design interventions that are accepted as 'good practice'. Good practice may be addressed through three major questions:

- context: what are the political, legal and administrative inheritances that influence the ability to regulate?
- experience: what has been the experience to date in the enactment and management of regulation?
- culture: what overriding values govern the way people think and act both as deliverers and recipients of regulation?

These are broad points that obviously break down into more detailed questions which, when answered, guide the development of 'good practice' for the regulator and stakeholders alike. By surfacing such vital detail from implicit to explicit levels of understanding, the regulator is equipped to comprehend the significance of 'imported' models of regulation and associated organisation structures and to critically adapt them by choice, for local country/sector use.

'Critical adaptation' seeks compatible options at an early stage through discussion amongst all interested parties, which may involve consensus seeking or negotiation in defining sustainable solutions to the regulation need. In seeking to agree a suitable form of regulation stakeholders may, for instance, exchange views on the pros and cons of proposals as seen from each of their perspectives. Regulatory appraisal methods may assist in this process.

### What principles underpin the 'diagnostic model' for capacity building ?

While failings in institutional practices occur in all types of regulatory agency, from legally enacted independent bodies who operate with a large degree of autonomy, to those within the mainstream public service, the issue of achieving full effectiveness may be more acute in the latter. This is because improving performance may be hindered by over-emphasised political accountability and outdated rules on financial matters and staff practices. Most certainly such organisations are also affected by cultural influences inherited from the public sector which are not compatible with a high achieving organisational environment. CRC has found that a significant proportion of regulators are aware of the issues involved and in many cases have solved them to a satisfactory level by skilful management of the decision making interfaces with the political and senior administrative contexts. However, an enduring feature of CRC discussions with senior regulatory staff has been the stated need for enhanced capacity building approaches that provide more than just 'training inputs' to rectify deficiencies and which address organisation change at a deeper level. Ideas generated from regulators and other stakeholders as part of capacity building research has enabled a conceptual

understanding of their needs in respect of management and organisational processes to emerge. This conceptual understanding depends on three principles that underpin the diagnostic approach to improvement:

- regulation can be conceived as an intention which can be monitored in terms of both output and impact (i.e. the importance of strategic planning/management including appraisal and impact assessment methodologies)
- regulation is also a process, whereby individuals systematically cooperate to deliver flows of output to regulatees/stakeholders, in line with intention, usually across traditional internal departmental/professional boundaries (i.e. the importance of work system design)
- quality outcomes in regulation depend on the effective management of people and processes (i.e. the importance of performance management)

The question arises 'what really is a diagnostic model and how may it be utilised?' First of all, on the basis of the principles around the search for 'good practice', it does not represent what might be termed a normative or prescriptive model, i.e. 'things must be done this way'. Quite the reverse, it represents a 'thinking tool' which regulators with their chief executive roles in mind may use to pose questions concerning the performance of their own organisations. This is its initial role: to question whether the components included are represented in the agency, what form they take, the extent to which they interact with one another within organisational processes and the quality of interactions experienced. Through this a regulator can achieve a more sophisticated picture of the situation in which the agency finds itself and be able to describe this. Thus the model may involve language build in terms of the management and organisational concepts introduced and move the regulator to the primary question 'how can the management of regulation be improved – what is 'better' in this respect?' Absence of any part of the model in the reality of the organisation is not a fault in itself but a stimulation to consider why this is so.

### How does the diagnostic model promote performance improvement ?

Discussions with regulators in the initial phase of CRC research have enabled the following diagnostic model for regulatory improvement to emerge.

Although to some extent the model represents a traditional systems view of organisational processes, at its heart are capacity building enhancers that the research shows to be vital ingredients for regulatory success by ensuring that the Specification of Regulatory Capacity desired by the organisation can be met. While the emphasis may change between the four enhancers over time, particularly as an agency moves from its foundation years towards maturity, all have to be promoted in an ongoing and dynamically interactive manner to build organisational capability that is at least as good as that possessed by the regulated enterprises.

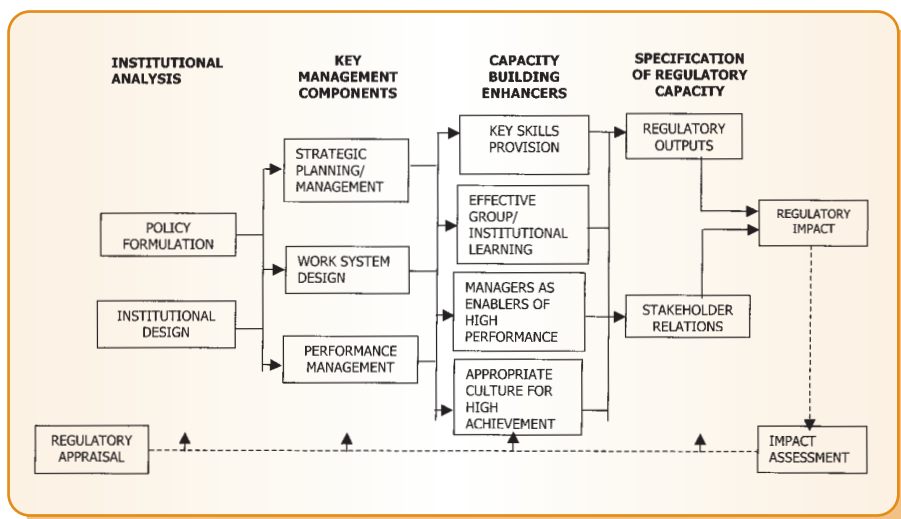
While the model is an aid to achieving a conceptual understanding of capacity building within a regulatory agency, its overall purpose is to stimulate activities to improve performance. Thus as both a visual representation and description it can be introduced into workshops involving the regulator and key staff to induce thinking on the key issues faced in skills provision, group/institutional learning, managers as enablers of performance and organisational culture. Initially, questions can be raised in these respects and then addressed by reference, in particular, to the quality of the key management components that underpin the capacity building enhancers. Workshops can then move beyond addressing issues to the identification of appropriate strategies and actions for improvement usually involving modification to principle and practice within one or more of the three management components and their interactions.

## Strategic Planning / Management

Strategic planning is an organised activity to guide all key decisions and actions that shape what an organisation is, what it does and why it does it. It gives rise to strategic management which emphasises the need for all managers to think strategically and to place their actions within an agreed strategic framework.

### Sources of information

- The stated political aims of regulation
- Legislation, including definition of regulatory aims and of the 'regulatory space' for intervention
- Evaluation of previous regulatory practices in the sector concerned
- Political climate for regulation including degree of emphasis on pro-poor provision



- Views of key stakeholders including those of consumers
- Financial/market performance of major private companies in sector
- The type of relations expected between the regulatory agency and key stakeholders
- Conditions under which 'regulatory capture' can be avoided
- Recommendations arising from regulatory appraisal

### Key principles

Strategic planning produces intentions and plans that are legislatively based and politically acceptable to the key constituencies involved in the decisionmaking. It therefore encompasses not only the interpretation of hard data on direction but also insights from key stakeholders who broaden the consideration of issues and invoke a learning process. Such plan formulation rests on intuition, creativity and building commitment, skills somewhat remote from the hard nosed economic competences governing regulation, but ones which a regulator needs to have on board to ensure the adequate interpretation of political direction, to stimulate a dialogue to improve political decisions and to understand what constitutes effective outcomes. This process may be aided by more analytically based appraisals of what the impact of regulation is likely to be.

Coalescing with the political debate, stakeholder analysis is another key ingredient in the strategic planning process, given the multiplicity of interests prevailing in a regulatory regime. The credentials of key stakeholders have to be recognised and the criteria of performance they would apply to regulation known. Strategic planning therefore predicts the best way forward given a situation in which individuals and groups wrestle for control of a regulator's attention and due regard. Stakeholder analysis in this respect is a means by which a regulator can place her/himself in the shoes of others, especially outsiders, and make assessments of the proposed intention from these external perspectives. Not only does this form a basis for Strengths-Weaknesses-Opportunities-Threats or Risks (SWOT) analysis, strategic issue identification and strategic development, but it is also an essential ingredient of ethical action. Additionally, stakeholder analysis provides an understanding on what the organisation needs from each stakeholder group, a very essential process in the delicate economic balances to be achieved in regulation.

Strategic management grows from strategic planning outputs to involve staff in the organisation in the systemic design of the processes of regulation from inception to delivery ensuring that regulatory intention is being supported. It builds the ability of the regulatory agency to avoid political and regulatory capture, to minimise information asymmetries and to maximise transparency of the criteria covering relationships with key stakeholders and the decisions affecting them. Limiting the randomness of approach amongst regulatory staff, ensuring the consistency of decisions and fulfilling accountability needs are also key aims that can only be met by an integrated and collaborative model of delivery driven by strategic management.

### Useful questions to activate strategic planning amongst senior staff

- What are the current demands arising from legislation (and political direction) and how do they impact on the organisation in terms of structures for decision making and achieving accountability?
- Can you describe how you think that any new regulatory policy enactments will be incorporated into your internal decision making? What principles will you follow in doing this? Is there any experience to draw upon in the way that policy requirements are converted into priorities for regulatory action?
- Who are your current stakeholders and what is their status in respect of legislation or de facto importance? Are there any additional stakeholders as a result of changed legislation? How do you foresee stakeholder involvement in any revision of the regulatory regime?
- In the light of answers to the first three questions, what form of strategic planning do you need in order for the organisation to convert regulatory policy intentions into commitments for regulatory action? How will the current practice of strategic planning, if it exists, need to change to meet any new regulatory demands?
- What are the most important skills you currently exercise in strategic management and how were they acquired? What new skills are being demanded of you and how will they be learned?
- What key data sets are essential for strategic planning and the monitoring of regulatory practices? Who is responsible for the compilation of these data sets and how do you ensure accuracy in their content?
- Are you equipped with capability in applying appraisal and impact assessment methodologies for regulation?

### Relevant analytical techniques

- **SWOT analysis to be undertaken by senior staff as a group**  
This analysis based on revealing strengths, weaknesses, opportunities and threats (risks) as affecting the organisation assists in the design of organisational strategy. It should pinpoint the potential capability to successfully 'read policy' and convert it to regulatory practice.
- **SIPOC model construction for senior staff in a group exercise**  
This diagnostic tool based on an analysis of supplier, input, process, output and customer (stakeholder) relationships allows a view to be taken on the broad principles for a regulatory system and raises the issue of effectiveness as an explicit ingredient which is linked to a feedback capability for improvement.
- **Force field analysis for all staff (working in small groups)**  
This instrument generates discussion on the nature of the change processes required to transform the regulatory regime to meet emergent demands on the organisation, including new legislation. Respondents are asked to identify forces working towards the new "ideal" state for the organisation and constraints holding back progress.

## Work System Design

Work system design conceptualises the organisation as a system driven by intention which consists of a series of interdependent processes. Each process is broken down into a series of tasks and it is important for those involved to understand: how tasks transform inputs into outputs; the essential interrelationships between the tasks and how the efficiency and effectiveness of the process can be measured. Such a system is the 'real organisation chart' which shows people what their jobs are and how they should work with one another.

### Sources of information

- Outputs of strategic planning referring to the nature and scope of the required regulatory system
- Knowledge of supplier/client relationships in the regulatory system
- Views of key stakeholders, including staff, on the design of the regulatory system
- Information technology possibilities

### Key principles

Work system design encourages an approach that reduces undue emphasis on traditional hierarchic control structures common in public service. While work proceeds under the strategic guidance of senior management, who set accountability criteria, work system design rests on an ability of groups of staff/stakeholders to analyse and improve work flows that may cut across departmental or functional boundaries. The most important outcome of an analysis of the work system in this way is shared understanding amongst those involved on how each link in the chain fits together, and constitutes a learning process geared towards improvement. When change is proposed, process mapping allows the possibilities to be explored in terms of each process and the system as a whole, exposing for instance what constitutes value adding as against work conducted purely 'as norm'. Additionally, analysis of process promotes a dialogue of:

- where weak points are that may inhibit success of each process/the total system
- difficulties arising in staff relationships at internal supplier/client 'transaction points'
- the required criteria of performance to enable the system to function.

This approach goes well beyond conventional job analysis in representing the demands to effectively deliver regulatory intention.

### Questions for staff on how work is organised and how understanding can be reached on potential improvements

- Can you describe each work process you are currently involved in, its purpose in relation to the whole system and how you contribute to it?
- Who directly 'receives' the output of your work? What other support processes enable you to complete your work? What information bases are necessary for your work?
- What skills are essential for your work? How did you learn these skills? What other skills do you think you need?
- How is your work evaluated? How does the evaluation lead to improvements and the enhancement of your skills? What role does the person you report to play in the improvement of performance and learning?

## Useful analytical techniques

### • Hierarchic task analysis for group responses (groups of up to twenty in closely aligned work)

This analysis generates feedback on how well existing job roles meet current and emergent organisational demands. Firstly, individuals examine their work tasks and collaboratively compare them with existing job descriptions. Secondly, the group as a whole discusses emergent regulatory priorities and re-examines their individual job roles to identify possible amendments and skills development needs. This analysis provides a preparation for the process mapping technique.

### • Process mapping

This technique involves mapping or capturing the 'chain' or sequence of events, activities, tasks and decisions that make up a process in order for groups to understand how things are currently undertaken as well as generating ideas for improvement. A process map can be further refined to produce a deployment chart that indicates the particular roles of staff in the process.

## Performance Management

Introducing a formal appraisal of performance reinforces a powerful message to managers, that 'you' are responsible for the performance of the staff you manage, and you must take active steps to help them do their jobs well. Performance management systems come in various forms but they all hope to achieve this management commitment by supporting a continuous dialogue between managers and their staffs on how results may be achieved and learning activities focused on priorities.

### Sources of information

- Outputs of the strategic planning system
- system design features
- Knowledge of current skills and potential within the workforce
- Views of staff and other stakeholders, such as human resource specialists, on what constitutes improved performance and how it may be measured
- Analysis of preferred management style in the regulatory agency, reflecting the regulator's experience and interpretation of the demands of creating a high performing organisation

### Key principles

Performance management derives its content from both the strategic planning process and the work system specification. As such it lays a basis for the performance of work units, teams and individuals which reflects the preferred success criteria of the regulatory body. Also, performance management generates feedback on which to judge staff

contributions, as linked to the improvement of performance and to the recognition of associated learning needs. This feedback to the respective parties has to be handled in a way acceptable to individuals in order to maintain commitment and continuous learning. If groups responsible for work processes have been encouraged to generate their own view on 'what is better' then this subjective assessment aids any evaluation based on performance indicators formally set for their work area. The design of a performance management system is challenging within the complexity of regulation but its success it is likely to be based on three qualities:

- openness of communication between staff to support transparency within the regulatory system and to minimise the risk of 'regulatory capture'
- purposes to encourage the integration of performance improvement and learning in achieving quality outcomes for regulation
- continuous assessment to maintain a focus on emergent regulatory needs

### Questions to investigate the usefulness of a performance management system

- What are the purposes of the performance management system and how do these relate to the overall quest to achieve regulatory effectiveness and efficiency? If a system currently exists what changes are needed in purposes to meet new demands arising?
- Should the performance management system involve formal appraisal through which managers and staff jointly review performance at regular intervals and seek ways of improvement? How will this appraisal build on on-going informal discussions?
- How will the system handle the recognition of learning needs amongst staff? What happens to this information? Does appraisal support the development of learning capabilities and how these may be utilised in skills acquisition?
- How is the effectiveness of the performance management system to be evaluated?

### Useful analytical techniques

#### • Understanding the cultural impact of change for senior managers

This approach utilises a questionnaire to generate information on the nature of the current organisation vis a vis the type of organisation respondents would like to be employed in and raises implications for the criteria governing performance measurement. The elements of this model are power, role, task and people orientations.

#### • Interactive skills development

This diagnostic method explores the nature of communication and can focus on the most appropriate ways that feedback

discussions between individuals and in teams can be handled.

### How is evaluation of regulation built into the diagnostic approach?

The diagnostic model portrays a picture of regulation being driven by political and strategic intentions. How regulation can be planned and managed through to delivery can be assisted by an appraisal exercise, e.g. RIA *ex ante*. The clear message is that the specification of regulatory capacity and the quality of its outcomes depend crucially on the ability to invoke appropriate management actions. These actions in the Diagnostic Model fall under the remit of Strategic Planning/Management, Work System Design and Performance Management. A main finding of CRC research is that these three components and their interactions are vital for the introduction of the Critical Capacity Building Enhancers, namely Key Skills Provision, Effective Group Learning, Managers as Enablers of High Performance and the Appropriate Culture for Achievement.

The impact of regulation can be measured through a relevant instrument, e.g. RIA *ex post*, and is likely to address one or more of the following strategic level concerns:

- the degree of success achieved in regulation in relation to political and economic considerations as judged by government, the legislature or other influential stakeholders
- the extent of implementation of any 'business plan' mandated by government/legislature for enhancing consumer interests and/or sector economic/financial viability
- the degree to which effective use has been made of any legislation underlying the work of the agency to address specific market issues
- the extent to which a positive impact has been made in the markets in question from the perspective of consumers, consumer groups and the wider public
- the extent to which views of the network of stakeholders within the industry/sector have been incorporated in a regulator's responses
- the level at which monitoring procedures to gauge the effectiveness of regulation have been established

Impact assessment also gives rise to feedback, as suggested in the Diagnostic Model, relevant to the quality of both the Capacity Building Enhancers and the supporting Key Management Components (re. – feedback loop at the base of the diagram).

CRC Policy Briefs are intended to provide those involved in development policy and practice with a clear understanding of the main issues and findings presented by CRC research and publication programmes on regulation, competition and development. This Policy Brief has been prepared by **Derek Eldridge** on the basis of CRC published outputs.

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### This CRC Policy Brief draws heavily on the CRC Working Papers below:

No.3. Minogue, M. *Governance-based Analysis of Regulation*. 2001

No.49. Eldridge, D. *Exploring the Inter-Relationships of Strategic Planning, Work System Design and Performance Management in Regulatory Agencies*. 2004

which are available on the CRC web site at: <http://idpm.man.ac.uk/crc/public.html>

### and also on

McCourt, W. and Eldridge, D. (2003), *Global Human Resource Management: Managing People in Developing and Transitional Countries*. Cheltenham: Edward Elgar